

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
NORTH AMERICAN) No. 82R-702
EXPLORATION CO., INC.)

For Appellant: John M. Palladino
Director, Corporate Taxation

For Respondent: John A. Stilwell, Jr.
Counsel

O P I N I O N

This appeal is made pursuant to section 26075, subdivision (a), ¹⁷ of the Revenue and Taxation Code from the action of the Franchise Tax Board in denying the claim of North American Exploration Co., Inc., for refund of franchise tax in the amount of \$1,056.67 for the income year ended July 31, 1981.

1/ Unless otherwise specified, all section references are to sections of the Revenue and Taxation Code as in effect for the income year in issue.

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The sole issue presented for our decision is whether respondent properly assessed a penalty for underpayment of estimated tax for **the** income year in question.

Appellant is a Colorado corporation which began doing business in this state in 1977. It files its California franchise tax returns on the basis of a fiscal year ending July 31.

On October 18, 1981, appellant requested an extension to file its return for the income year ended July 31, 1981. With the application for an extension, appellant reported a self-assessed 1981 tax liability of \$20,000 and included an estimated tax payment in this amount. Upon review of its records, respondent determined that appellant had not paid any estimated tax for that income year prior to this date.

On April 15, 1982, within the extended filing period granted by the Franchise Tax Board, appellant filed a timely 1981 franchise tax **return**, showing a total tax liability of \$18,241. Claiming a credit for its earlier payment of \$20,000 in estimated tax, appellant requested a refund of a tax overpayment in the sum of **\$1,759**. Based on its finding that appellant had not paid any installments of estimated tax for 1981, respondent determined that appellant was subject to a penalty of **\$1,056.67** for underpayment of estimated tax. On June 3, 1982, respondent advised appellant by written notice that it was being assessed an estimated tax penalty in the aforementioned amount. Shortly thereafter, after offsetting the penalty against the reported tax overpayment, respondent refunded the balance of \$702.33, plus interest. Appellant then submitted a claim for refund of the amount of the assessed penalty. The claim was denied, resulting in this appeal.

In this appeal, appellant contends that the Franchise Tax Board was required under section 25662 to "adequately **set** forth the reasons for the proposed additional assessment." (Appeal Ltr. at 2.) Appellant argues that respondent's notice of penalty violated this section because it did not provide any details of the penalty assessment. Appellant's position is not well taken.

As a procedural matter, section 25662 deals with proposed assessments of additional tax or deficiency notices. (See Appeal of Paul A. Laymon, Inc., Cal. St. Bd. of Equal., Oct. 6, 1976.) The instant appeal involves

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a disallowance of a claim for refund which is governed by the provisions found in section 26071 et seq. Section 26075 does require that the Franchise Tax Board notify a taxpayer of a disallowance of a refund claim. There is, however, no statutory requirement mandating respondent to provide the reasons for its disallowance or the details of its computations in taking such action. For that matter, respondent has correctly pointed out that a notice of action on a claim for refund is not a strict requirement, for section 26076 provides that if respondent fails to mail such notice within six months of the filing of a refund claim, the taxpayer may consider the claim denied and file an appeal. (Rev. & Tax. Code, § 26076.) In short, there is no statutory authority for appellant's notice argument.

On a substantive note, by complaining that respondent did not set forth its computations of the penalty, appellant also appears to argue that there is no reasonable basis for the imposition of the penalty for underpayment of estimated tax. We find, however, that the record in this appeal fully supports the action of the Franchise Tax Board.

Every corporation subject to the franchise tax is required to file a declaration of estimated tax and pay the estimated tax during the income year. (Rev. & Tax. Code, §§ 25561-25565.) If the amount of estimated tax does not exceed the \$200 minimum tax, the entire amount is due and payable on or before the 15th day of the 4th month of the income year. (Rev. & Tax. Code, § 25563, subd. (a).) On the other hand, if the amount of estimated tax exceeds \$200, which is the case in the instant appeal, it is payable in four equal installments on the 15th day of the 4th, 6th, 9th, and 12th month of the income year. (Rev. & Tax. Code, § 25563, subd. (b).)

Since appellant reports its income on the basis of a fiscal year ending July 31 and its 1981 tax liability exceeded \$200, appellant was required to pay the estimated tax for the appeal year, or at least the first 25-percent installment thereof, on or before November 15, 1980. Not only did appellant fail to make this payment, but it did not pay any estimated tax on the three subsequent installment dates (January 15, 1980; April 15, 1981; and July 15, 1981) either. The record shows that appellant paid its estimated tax for 1981 on October 18, 1981, 2 1/2 months after the end of the income year. Because appellant failed to pay any installments of

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estimated tax during the income year ended July 31, 1981, it is clear that appellant underpaid its estimated tax for the year and was subject to the penalty for underpayment of estimated tax.

Where a taxpayer underpays its estimated tax, section 25951 authorizes a penalty equal to 12 percent of the "amount of underpayment (determined under Section 25952) for the period of the underpayment (determined under Section **25953**).". The "amount of underpayment" is defined as the excess of the amount of estimated tax that would be required to be paid on each installment if the estimated tax were equal to 80 percent of the tax shown on the return for the income year, over the amount, if any, actually paid on or before the due date of each installment. (Rev. & Tax. Code, § 25952,) Conversely, there is no **underpayment** if a **taxpayer** has. paid 80 **percent** of its tax liability over the course of the income year. The "period **of** the underpayment" for each installment runs from the date the installment was required to have been made until either the 15th day of the 3rd month following the close of the income year or the date on which any portion of the underpayment was paid, whichever is earlier. (Rev. & Tax. Code, § 2.5953.)

In the present appeal, the amount of appellant's underpayment of estimated tax would be calculated by taking 80 percent of its 1981 tax liability shown in its return (80 percent of \$18,241) and dividing this figure into four equal installments. Each of these four payments would then constitute an underpayment since appellant did not pay any installments of estimated tax. The four periods of underpayment for calculation of the 12 percent per annum penalty would run from the due date of each of the four installments under section 25563, subdivision (b), until the 15th day of October 1981, which is three days earlier than **the date** when appellant made its estimated tax payment of \$20,000. Based on our review of the penalty provisions under section 25953 et seq. and the facts in appellant's case, we find that respondent properly determined the penalty for **underpayment** of estimated tax for the income year in question.

It is well settled that respondent's determinations in regard to the imposition of tax and penalties, other than the fraud penalty, are **presumptively** correct and the taxpayer has the burden of showing error in those determinations. (Appeal of K. L. Durham, Cal. St. Bd. of Equal., Mar. 4 1980; Appeal of Myron E. and Alice Z. Gire, Cal. St. Bd. of Equal., Sept. 10, 1969; Appeal of

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Woodview Properties, Inc., Cal. St. Bd. of Equal.,

Oct. 10, 1984.) Relief from the penalty **for** underpayment of estimated tax is available only under certain circumstances set forth in section **25954**. Here, appellant has not contended, much less demonstrated, that it is entitled to relief under this section. Accordingly, respondent's action in this matter must be sustained.

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O R D E R

Pursuant to the views expressed in the opinion of the board on file in this proceeding, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, pursuant to section 26077 of the Revenue and Taxation Code, that **the** action of the Franchise Tax Board in denying the claim of North American Exploration Co., **Inc.**, for refund of franchise tax in the amount of **\$1,056.67** for **the income** year ended July 31, 1981, be and the same is hereby sustained.

Done at Sacramento, California, this 20th day of August , 1985, by the State Board of Equalization, with Board **Members** Mr. Collis, Mr. Nevins and Mr. Harvey present.

_____	, Chairman
<u>Conway H. Collis</u>	, Member
<u>Richard Nevins</u>	, Member
<u>Walter Harvey*</u>	, Member
_____	, Member

*For Kenneth Cory, per Government Code section 7.9